

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

IN RE UPSTREAM ADDICKS AND BARKER (TEXAS) FLOOD-CONTROL RESERVOIRS

Sub-Master Docket No. 17-cv-9001L

Judge Charles F. Lettow

THIS DOCUMENT RELATES TO:

Electronically filed January 2, 2019

ALL UPSTREAM CASES

**MOTION TO REQUIRE PLAINTIFFS TO COMPLY WITH THE COURT’S
SCHEDULING ORDER BY FILING A FINAL WITNESS AND EXHIBIT LIST,
MOTION TO MODIFY THE SCHEDULING ORDER, AND REQUEST FOR
EXPEDITED TREATMENT**

The Court’s October 29, 2018 Scheduling Order required Plaintiffs to file their Pre-Trial Memorandum, final Exhibit List and final Witness List on December 24, 2018. *See* Scheduling Order, ECF No. 170; *see also* RCFC App’x A, ¶¶ 15, 16. Plaintiffs filed their Pre-Trial Memorandum (ECF No. 180), but did not file a final Exhibit or Witness List.

Plaintiffs' preliminary lists identified more than 2,300 documents that they may use at trial and more than 160 possible witnesses. Those lists are over-inclusive, and Plaintiffs should narrow their lists in as-filed, final documents.

On December 26 and 27, the undersigned counsel for the United States asked counsel for Plaintiffs to file their final Exhibit and Witness lists. On December 27, the United States filed a Certification, identifying this issue and requesting that the Court order Plaintiffs to file their final Exhibit and Witness lists immediately. *See* ECF No. 181. Plaintiffs have not responded to that filing or otherwise contacted the undersigned counsel about this matter since the United States filed its Certification.

Plaintiffs' violation of the Court's Scheduling Order prejudices the United States by rendering it impossible to know what documents Plaintiffs may actually use at trial or what witnesses Plaintiffs actually intend to call at trial. The United States requests that the Court order Plaintiffs to immediately file their final Exhibit and Witness Lists. The United States' pre-trial filings are currently due on January 22 and trial is due to begin on February 18. The United States requests that the Court postpone those dates by a period of time equal to Plaintiffs' delay. Plaintiffs' delay is currently seven days. Thus, if Plaintiffs make their filings today, the United States requests that the Court modify the schedule so that the United States makes its pre-trial filings on January 29 and trial begin on February 25. Due to the extraordinarily limited amount of time before trial begins, the United States respectfully requests that this matter be expedited.¹

Dated: January 2, 2019

Respectfully submitted,
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¹ The United States filed a Motion for a Stay of Case in Light of Lapse of Appropriations on January 2, 2019. If the Court grants that motion, the United States requests that Plaintiffs file their final Witness and Exhibit Lists immediately, but that the other requests in this motion be treated as moot.

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